

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Expanding the Economic and Innovation
Opportunities of Spectrum through Incentive
Auctions

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Docket No. 12-268

To: The Commission

PETITION FOR RECONSIDERATION

Signal Above, LLC (Signal Above),¹ by counsel, pursuant to FCC Rule 1.429, hereby respectfully submits this Petition for Reconsideration of the *Report and Order*² in the above-captioned proceeding. Signal Above seeks reconsideration of the Commission's failure to provide a rational basis or any cost-benefit analysis for excluding low-power television stations (LPTV) in the incentive auction. Signal Above also seeks reconsideration of the Commission's mandatory analog-to-digital transition date of September 1, 2015.

The Commission excluded LPTV from the incentive auction without any stated analysis other than pointing to the secondary nature of LPTV licenses.³ The Commission has

¹ Signal Above is the licensee of two LPTV stations, WDCN-LP Fairfax, Virginia and WDCN-LP Salisbury, Maryland.

² Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, FCC 14-50, GN Docket No. 12-268 (June 2, 2014) 29 FCC Rcd 6567 (2014).

³ See Report and Order paragraph 656 and note 1824. The concept of secondary status embodied in 47 CFR § 73.702(b) (FCC's Rules) is narrow and specific. It means precisely that vis-à-vis objectionable interference with full power stations the burden is on the LPTV to fix it or yield. It does *not* mean pre-emptible, or dispensable, or ignorable. LPTV's "secondary status" does *not* mean that it must yield to any licensed service, like an unlicensed transmitter must. In 2000, the FCC described LPTV as follows: "From its creation by the Commission in 1982, the low power television service has been a 'secondary spectrum priority' service whose members 'may not cause objectionable interference to existing full-service stations, and ... must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs,'" citing to **Report and Order in BC Docket No. 78-253, 51 R.R. 2d 476, 486 (1982)**. As other Commenters on this Report and Order have carefully explained "The concept of "secondary" is thus not that stations can be wiped out any time for any reason but only

acknowledged the importance of LPTV service, as has the Government Accountability Office in their September 2011 report.⁴

Given the significant importance and role of LPTV, it is incumbent upon the Commission to complete the analysis required by the Regulatory Flexibility Act.⁵ Under the Regulatory Flexibility Act, agencies are to conduct an analysis in order to minimize any significant negative economic impact. The analysis is to be included in the rationale for adoption of any final rule. Comments were filed in this proceeding suggesting that inclusion of LPTV in the incentive auction would speed up the repacking process, make available more spectrum for the forward auction, and result in more revenue for the government. The various proposals have not been addressed, nor has the Commission conducted its own independent analysis of the economic impact to LPTV of either excluding or including LPTV in the Incentive Auction.

The Commission noted that a subsequent NOPR would be released to deal with certain issues related to LPTV.⁶ One of those issues is the current proposed analog-to-digital transition date of September 1, 2015. To the extent that issue is not adequately addressed in a subsequent NOPR, Signal Above respectfully requests that the transition date be extended to a date sufficiently beyond the date the repack is complete and the spectrum transition finalized, so as to avoid what the Commission acknowledges is a “significant investment.”^{7, 8}

that they must yield to one specific superior primary service – full power television.” Spectrum Revolution. <http://www.spectrumevolution.org/analysis-of-secondary-status-of-low-power-television>

⁴ U.S. Gov’t Accountability Office, GAO-11-790, Telecommunications: Enhanced Data Collection and Analysis Could Inform FCC’s Efforts to Complete the Digital Transition of Low-Power Television Stations and Reallocate Spectrum (2011).

⁵ 94 Stat. 1164.

⁶ See Report and Order paragraph 657 and 79 FR Rcd 48442 (2014) paragraph 162.

⁷ Second Report and Order, MB Docket No. 03-185, FCC 11-110, Para. 8 (rel. July 15, 2011)

Woodenly adhering to the September 1, 2015 deadline would cause the very harm the Commission commendably sought to avoid in extending its original proposed deadline from 2012 to 2015.⁹ With the current delays associated with the Incentive Auction, this mandatory transition date is an arbitrary date harmful to analog low power television operators with minimal countervailing public interest benefits. The mandatory transition date will require many low power television stations to incur unnecessary expense to build digital facilities only to face the likely prospect of being displaced and having to construct new facilities once the final Incentive Auction rules are adopted.¹⁰ The prospect of a low power television licensee building a digital facility only to find that after the channel repacking it no longer has an available channel is also likely. The mandatory transition date would additionally result in unnecessary termination of radio-like service provided by analog operators on channel 6, like those of Signal Above, that provide much needed service to minorities.

⁸ Signal Above filed a Petition for Review of the *Report and Order*, which adopted the September 1, 2015 transition date. The appeal is being held in abeyance pending further Commission action on the issue. See *Signal Above, LLC v. FCC*, No. 14-1069 (D.C. Cir. filed May 7, 2014).

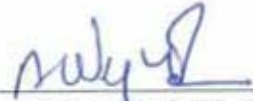
⁹ “We conclude that adoption of a transition date in 2012, as proposed in the Further Notice, would not be appropriate given the present status of the ongoing proceedings implementing the Broadband Plan. Specifically, in November 2010 the Commission initiated the Broadband Innovation rulemaking proceeding to consider the reallocation of existing UHF and VHF spectrum for the provision of wireless broadband services. To facilitate the recovery of spectrum for wireless services, the Commission sought comments on a framework to allow two or more stations to share a six-megahertz channel, as well as on the possibility of repacking the remaining channels to increase the efficiency of spectrum use. A 2012 deadline would be more likely than a later deadline to require some low power operators to construct digital facilities twice: once to meet the 2012 conversion deadline; and then later in accordance with any reallocation scheme. Commenters point out that many low power television stations are not in the position to transition twice. We agree that it would be preferable for these stations not to have to make the significant investment required for conversion to digital facilities, when such facilities may have to be substantially modified due to channel displacement or taken off the air altogether in connection with the implementation of a spectrum repacking scheme. We share the concern, expressed by George Flinn, that “an accelerated push to force a digital conversion, without any overwhelming need (again, since LPTV stations are secondary services and the National Broadband Plan effort is still in its infancy), will only artificially pressure both LPTV owners and viewers (in a time of prolonged financial headwinds).” Second Report and Order, MB Docket No. 03-185, FCC 11-110, Para. 8 (rel. July 15, 2011) (footnotes omitted).

¹⁰ See generally, *Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Docket No.12-268, 27 F.C.C.R. 12357(2012).

Respectfully submitted,

Signal Above, LLC

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